



COUNTY OF LOS ANGELES
CLAIMS BOARD

500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

Maria M. Oms
Auditor-Controller
John F. Krattli
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

October 3, 2005

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Veronica Oliveros, Jesus Oliveros v. County of Los Angeles**
Los Angeles Superior Court Case No. TC 013 770

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$1,500,000, plus assumption of the Medi-Cal Lien not to exceed \$155,334, plus waiver of Rancho Los Amigos National Rehabilitation Center's bill in the amount of \$66,426.
2. The Auditor-Controller be directed to draw warrants to implement this settlement from the Department of Health Services.

Enclosed is the settlement request and a summary of the facts of the case.

The Corrective Action Report is being transmitted to you under separate cover by the Department of Health Services.

Return the executed, adopted copy to Georgene Salisbury, Suite 648
Kenneth Hahn Hall of Administration, Extension 4-9910.

Very truly yours,

A handwritten signature in black ink, appearing to read "Maria M. Oms", is written over a horizontal line.

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO:gs

Enclosure

MEMORANDUM

September 22, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: DAVID O'KEEFE, ESQ.
Bonne Bridges Mueller O'Keefe & Nichols

OWEN L. GALLAGHER
Principal Deputy County Counsel
Litigation Cost Management Division

RE: Veronica Oliveros, Jesus Oliveros v. County of Los Angeles
Los Angeles Superior Court, South Central District Case
No. TC013770

DATE OF
INCIDENT: September 17, 1999

AUTHORITY \$1,500,000, Plus Assumption of the Medi-Cal Lien Not To Exceed
REQUESTED: \$155,334, Plus Waiver of Rancho Los Amigos National Rehabilitation
Center's Bill in the Amount of \$66,426


COUNTY
DEPARTMENT: DEPARTMENT OF HEALTH SERVICES


CLAIMS BOARD ACTION:

☐ Approve

☐ Disapprove

☒ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on October 3, 2005

SUMMARY

This is a recommendation to settle for \$1,500,000, the medical negligence lawsuit brought by Veronica Oliveros for the injuries she sustained on September 17, 1999, while hospitalized at Harbor/UCLA Medical Center. The County, having billed \$66,426 for the provision of medical care, has a claim for reimbursement which will be waived. The State, having paid \$155,334 for the provision of Medi-Cal care, has a claim for reimbursement, which will be settled by the County. Mrs. Oliveros' husband, Jesus Oliveros, has a separate cause of action for loss of consortium, which is also being resolved by this settlement.

LEGAL PRINCIPLE

The County is liable for the failure of its hospital and medical staff to provide services consistent with the appropriate standard of care for the circumstances encountered.

SUMMARY OF FACTS

On September 16, 1999, at 6:30 a.m., Veronica Oliveros, a 27-year-old woman with a history of damage to her heart muscle and heart valves caused by episodes of rheumatic fever (rheumatic heart disease), underwent a surgical procedure at Harbor/UCLA Medical Center to replace one of the valves of the heart (mitral valve replacement). The mitral valve replacement procedure required that she be placed on a mechanical device used to divert the flow of blood (bypass machine). At 3:40 p.m., surgery was concluded without complication. After surgery, Mrs. Oliveros remained with a breathing tube inserted through her mouth, past the voice box (intubation), and she was placed on a mechanical device for oxygenation of the blood (ventilator).

On September 17, 1999, at about 4:00 a.m., a decision was made to begin the process of weaning Mrs. Oliveros off the ventilator. However, sometime between 7:00 a.m. and 7:10 a.m., before medical personnel could fully implement their plan to wean her off the ventilator, Mrs. Oliveros voluntarily removed her breathing tube (self-extubation). At 7:10 a.m., it was noted that the percentage of oxygen carried by her red blood cells (oxygen saturation) had declined. Medical personnel determined that the decline in her oxygen saturation was within acceptable limits, and a decision was made that she not be re-intubated.

At about 7:30 a.m., it was noted that Mrs. Oliveros had developed a high pitched, noisy sound during breathing indicative of an obstruction of her air passages (stridor), a sign of difficulty in breathing.

At 7:53 a.m., a test to record electric activity of the heart (electrocardiograph [EKG]), indicated that Mrs. Oliveros was experiencing an abnormally fast cardiac rhythm (supraventricular tachycardia). Supraventricular tachycardia may be the result of abnormally low levels of oxygen.

At 7:55 a.m., Mrs. Oliveros was seen by an anesthesiologist. It was noted that her oxygen saturation level was below normal limits, and her respirations were abnormally high and shallow. Medical personnel determined that she required immediate re-intubation, which was accomplished by 8:00 a.m.

On September 21, 1999, Mrs. Oliveros was given a neurologic examination. Results of the neurologic examination indicated that she was suffering from neurologic deficits, which continued to worsen throughout her hospitalization at Harbor/UCLA Medical Center.

On October 7, 1999, Mrs. Oliveros was transferred to Rancho Los Amigos National Rehabilitation Center for further management of her neurologic condition. The medical record at Rancho Los Amigos National Rehabilitation Center contains the statement of a County neurologist that Mrs. Oliveros' September 17, 1999, self-extubation at Harbor/UCLA Medical Center "is consistent with the patient's clinical status and very likely represents the underlying cause of her condition."

On October 19, 1999, Mrs. Oliveros was discharged. She currently suffers from an exaggeration of tendon reflexes (spasticity), is wheelchair-bound, unable to speak, communicate, or care for herself, and requires full-time attendant care, which medical experts attribute to global neurologic deficits resulting from having suffered a loss of oxygen (hypoxia) on September 17, 1999, during the approximately 45-minute period between her self-extubation and her re-intubation.

DAMAGES

If this matter proceeds to trial, the claimant will likely seek the following:

Veronica Oliveros,	
Future Medical Care	\$11,822,274
Past Medical Care	\$ 236,578
Pain and Suffering (MICRA limit)	\$ 250,000
Jesus Oliveros,	
Loss of Future Spousal Services	\$ 742,745
Pain and Suffering (MICRA limit)	\$ 250,000
Costs of Litigation	\$ <u>90,000</u>
TOTAL	\$13,391,597

The proposed settlement includes:

Veronica Oliveros, Cash Settlement	\$ 885,500
Jesus Oliveros, Pain and Suffering (MICRA limit)	\$ 250,000
Attorney's Fees (MICRA Estimate)	\$ 284,500
Costs of Litigation	\$ <u>80,000</u>
TOTAL	\$1,500,000

A portion of the recommended settlement may be directed by claimants to purchase an annuity. The amount and structure of the annuity have not been selected at this time.

STATUS OF CASE

The current trial date has been vacated pending approval of this settlement.

This matter involved complex issues surrounding the medical condition of Veronica Oliveros and the cause of her neurologic injury. In addition, the attorney for Mr. and Mrs. Oliveros had made a demand to settle this case for \$4,000,000. Due to the inability of the parties to reach a reasonable settlement until only recently, it was necessary for the County to be completely prepared for trial, including making and opposing all motions, preparing exhibits and jury instructions, and completing witness preparation.

Trial was originally set in this matter for July 9, 2002. However, the trial court refused to continue the trial when our contract defense counsel requested a continuance, because he was engaged in trial in another case in the same courthouse. As a result, the judge directed a verdict against the County in the amount of \$12,558,852.99. The County successfully appealed the judge's decision, and the Court of Appeals ordered a new trial.

Expenses incurred by the County in the defense of this case through August 24, 2005, are attorney's fees of \$409,058 and \$137,308 in costs.

The total cost to the County, as a result of this settlement, is as follows:

Indemnity (Settlement Amount)	\$1,500,000
County Attorney's Fees and Costs	\$ 546,366
Waiver of Hospital Billing	\$ 66,426
Medi-Cal Lien	\$ <u>155,334</u>
TOTAL	\$2,268,126

EVALUATION

Veronica Oliveros alleges that medical personnel negligently failed to timely and appropriately address her declining condition subsequent to her self-extubating her breathing tube, resulting in an hypoxic event and neurologic injury.

Medical experts for Mrs. Oliveros will testify that her declining oxygen saturation level, noted immediately after she self-extubated, together with evidence of the development of stridor, supraventricular tachycardia, and abnormally high and shallow respirations, are evidence that she was unable to continue breathing on her own. Taken as a whole, these facts required that she be re-intubated prior to 7:55 a.m, which medical personnel failed to timely appreciate. Her medical experts will further testify that the failure of medical personnel to timely appreciate the significance of Mrs. Oliveros' declining condition, and the failure to re-intubate her prior to 7:55 a.m., fell below the applicable standard of care, resulted in an hypoxic event sufficient to produce neurologic injury, and are directly responsible for the results observed here.

The County has expert support for the proposition that these facts did not require an earlier re-intubation, and that the standard of care was not violated. It is the County's position that Mrs. Oliveros' neurologic injury was due to localized areas of dead tissue within the brain, ultimately brought about by the presence of microscopic bubbles of air and solid particles generated in the blood by the bypass machine (microembolism shower), which occurred during surgery on September 16, 1999, and which is a known risk of a bypass procedure. However, a diagnosis of a microembolism shower injury can only be made by clinical assessment. There is no test available to substantiate that her neurologic injury was caused by a microembolism shower, and there is no test that would substantiate that her neurologic injury occurred prior to her self-extubation on September 17, 1999. In addition, the County is unable to establish to a reasonable medical certainty, assuming a microembolism shower is responsible for the neurologic injury, that Mrs. Oliveros' injury was not otherwise exacerbated by an hypoxic event occurring as a result of her self-extubation.

Given the timing and circumstances surrounding Mrs. Oliveros' self-extubation and re-intubation, and the statement in the medical record that her self-extubation "is consistent with the patient's clinical status and very likely represents the underlying cause of her condition," we believe that a jury might reasonably conclude that Mrs. Oliveros' self-extubation, followed by a 45-minute or greater period before re-intubation, was either the direct cause of her neurologic injury, or, at a minimum, was a substantial contributing cause of her neurologic injury.

We join with our private counsel, Bonne Bridges Mueller O'Keefe & Nichols, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of \$1,500,000, a waiver of the County's medical billing not to exceed \$66,426, and payment of the Medi-Cal lien in the amount of \$155,334.